



Office of the Attorney General
State of Texas

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ATTORNEY GENERAL

September 27, 1996

Mr. Lawrence R. Jacobi, Jr., P.E.
General Manager
Texas Low-Level Radioactive Waste
Disposal Authority
7701 North Lamar Boulevard, Suite 300
Austin, Texas 78752

Letter Opinion No. 96-106

Re: Authority of the Texas Low-Level Radioactive
Waste Disposal Authority to exchange real
property with a private individual (ID# 38918)

Dear Mr. Jacobi:

You ask whether the Texas Low-Level Radioactive Waste Disposal Authority ("the authority") may exchange its land for land owned by a private party. The property at issue is a portion of a 16,000 acre ranch purchased pursuant to Health and Safety Code chapter 402, which makes the authority, a state agency, responsible for ensuring that Texas has the necessary capability to dispose of low-level radioactive waste.¹ Only 500 acres of the ranch have been selected for use as a disposal site.² The remainder of the ranch is currently leased for livestock grazing. You say that neither piece of land proposed for exchange is part of the 500-acre disposal site.

You tell us that a private party owns a 320-acre tract of land that is completely surrounded—or landlocked—by the authority's ranch. The party also owns land adjacent to the ranch's eastern boundary. For the convenience of both parties, you propose to exchange 320 acres of authority-owned land on the ranch's eastern edge for the 320-acre tract of private property landlocked by the ranch.

We begin by noting that Texas courts have defined an "exchange" of property as occurring when parties pass property to each other without having an agreed value placed on both properties. *Grissold v. Tucker*, 216 S.W.2d 276, 278 (Tex. Civ. App.—Fort Worth 1948, no writ). A "sale," by comparison, occurs when property is transferred at an agreed or market value. *Id.* Some courts have found the distinction between sale and exchange to be purely technical, since the result is the same. See *Weisbart & Co. v. First Nat'l Bank of Dalhart*, 568 F.2d 391, 395 (5th Cir. 1978); *Fain Land & Cattle Co. v. Hassell*, 790 P.2d 242, 246 (Ariz. 1990). We believe that whether the authority's proposed transaction is characterized as an exchange or a sale/purchase, it essentially involves both the acquisition and conveyance of state property. We conclude that the authority may not exchange the property as proposed.

¹See Health & Safety Code § 402.002; see also *id.* § 402.0921 (requiring authority board to select site in Hudspeth County as disposal site).

²The "disposal site" is the property or facility at which low-level waste is actually processed and disposed. *Id.* § 402.003(5). The authority may acquire land necessary to construct and operate the disposal site. *Id.* § 402.094(a).

It is well established that the disposition of state-owned land is a matter over which the legislature has exclusive control, and the power of a state agency to convey state property may be exercised only under the legislature's authorization. *Lorino v. Crawford Packing Co.*, 175 S.W.2d 410, 414 (Tex. 1943); *Conley v. Daughters of the Republic*, 156 S.W. 197, 200 (Tex. 1913); Attorney General Opinion JM-1242 (1990) at 4-5. Courts and this office have required strict compliance with the terms of legislative authorization for the conveyance of land. See, e.g., *State v. Easley*, 404 S.W.2d 296, 298-99 (Tex. 1966); *Wilson v. County of Calhoun*, 489 S.W.2d 393, 397 (Tex. Civ. App.—Corpus Christi 1972, writ ref'd n.r.e.); Attorney General Opinions JM-1242 (1990) at 4-5, MW-62 (1979) at 1, and V-320 (1947) at 1-2. We believe that statutes authorizing acquisition must also be strictly construed.

Section 402.094 of the Health and Safety Code sets out the authority's power with respect to acquiring real property.³ It provides:

(a) The authority may acquire by gift, grant, or purchase any land, easements, rights-of-way, and other property interests necessary to construct and operate a disposal site.

(b) The authority must acquire the fee simple title to all land and property that is a part of the licensed disposal site.

(c) The authority may lease property on terms and conditions the board determines advantageous to the authority, but land that is part of a licensed disposal site may not be leased.

(d) The authority may lease land owned by the authority that is not part of a licensed disposal site. Land leased by the authority under this section may be used only for agricultural, ranching, or grazing purposes.

Although subsection (a) allows the authority to acquire land "by gift, grant, or purchase," nothing in section 402.094 gives it the power to acquire land by "exchange." We follow the long-standing rule of statutory construction that "where a power is granted, and the method of its exercise prescribed, the prescribed method excludes all others and must be followed." *Foster v. City of Waco*, 255 S.W. 1104, 1105 (Tex. 1923); see Attorney General Opinion JM-995 (1988) at 5. In this case, because the legislature listed the methods of land acquisition and did not include the power to acquire by exchange, the authority may not exchange its land for land owned by a private party.

Even if the authority purchases the private land, which the legislature permits it to do in accordance with section 402.094(a), it may not convey state property to effect the desired exchange. No power to convey land is given to the authority, except by leasehold under certain conditions. This office has determined that a state agency with the power to acquire land cannot also dispose of state land unless it is expressly authorized to do so. See Attorney General Opinion C-207 (1964).

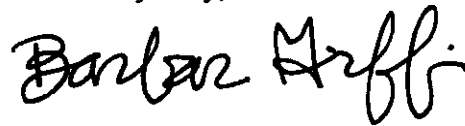
³Chapter 402 also allows the authority to purchase land dedicated to the permanent school fund or the permanent university fund. Health & Safety Code § 402.124. This section is not applicable to the proposed transaction.

We also believe that if the legislature had intended to allow the authority to convey land or to acquire land by exchange, it would have expressly done so, as it has done in numerous other statutes. We noted in Attorney General Opinion JM-1242 that legislative grants of power with respect to the acquisition and conveyance of land have been express and specific. Attorney General Opinion JM-1242 (1990) at 5. For example, soil and water conservation districts may acquire real property "in any manner, including purchase, exchange, lease, gift, grant, bequest, or devise, any real or personal property." Agric. Code § 201.104. Grants of power to convey have been expressed similarly. *See, e.g., id.* § 58.022 (allowing Texas Agricultural Finance Authority to "sell, lease, encumber, mortgage, exchange, donate, convey, or otherwise dispose of" real property). No such general powers of acquisition or conveyance are granted to the authority in chapter 402 or elsewhere. We believe that the legislature intended to limit the authority's powers to the acquisition of property by the methods listed in section 402.094.

S U M M A R Y

Absent express statutory authority, the Texas Low-Level Radioactive Waste Disposal Authority may not exchange its land for land owned by a private party.

Yours very truly,

A handwritten signature in black ink, appearing to read "Barbara Griffin". The signature is fluid and cursive, with the first name "Barbara" written in a larger, more prominent script than the last name "Griffin".

Barbara E. Griffin
Assistant Attorney General
Opinion Committee